

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION ET AL,

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10 Debtor.

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12 - - - - -x

13
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 January 17, 2008

19 10:26 AM

20
21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
24
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P R O C E E D I N G S

THE COURT: Okay. This is Delphi Corporation. Just for those of you who are standing and not participating, as you can see from the sign there is an overflow courtroom which has the advantage of letting you use your various devices and for the benefit of the people in that courtroom as well as people appearing on the phone I'm going to ask the parties to try to remember to speak into the microphone because that's what gets picked up in both cases.

Okay, Mr. Butler.

MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn Marafioti and Al Hogan appearing with our colleagues on behalf of Delphi Corporation and it's debtor affiliates and subsidiaries for our confirmation hearing on the first amended joint plan of reorganization of Delphi Corporation and its affiliated debtors and debtors in possession that was filed on December 10, 2007 at docket number 11386.

Your Honor we did file a confirmation hearing agenda and it has been served. And we would propose to address the matters in the order on the agenda.

THE COURT: Okay. That's fine.

MR. BUTLER: Your Honor, the first matter that I'd like to deal with, in connection with the rule -- Bankruptcy Rule 3018(a), there are only four motions that were filed in this case seeking an estimation of claims for the purposes of

1 voting on the plan of reorganization. Three of those -- all of
2 those matters have been resolved. Let me just address the
3 first -- address them and the only -- and then Mr. Burger can
4 deal with matter number four.

5 Bank of America -- number one on the agenda is the
6 Bank of America motion for temporary allowance of claims at
7 docket number 9683. Number two is the Technology Properties
8 motion for temporary allowance of claims at docket number 10425
9 and number three is the FCI claims estimation motion at docket
10 number 11618. Those have all been withdrawn and will not be
11 proceeding this morning.

12 I'll let MR. Burger address the SPCP group motion for
13 temporary allowance of claims at docket number 1169.

14 THE COURT: Before -- before I hear from him, they've
15 been withdrawn, is there any agreement as to the amount of the
16 vote or it's just --

17 MR. BUTLER: Those matters, I believe, unless someone
18 tells me -- correct me, I believe -- my understanding is those
19 have simply all been withdrawn.

20 THE COURT: Okay. All right.

21 MR. BERGER: Judge, Neil Berger, Togut Segal & Segal.
22 Your Honor, as to the Silver Point motion we have an agreement
23 we communicated to chambers last night that it is going to be
24 withdrawn. Silver Point agrees to withdraw its Rule 3018
25 motion provided that Silver Point is permitted to vote its

1 claim number 14347 as assignee of NXP Semi Conductor in class
2 three in the amount of \$194,272.52 and it's claim number 11567
3 as assignee of ON Semi Conductor in class 5C in the amount of
4 \$24,141.71 provided though, Your Honor, that the 5C ballot on
5 claim number 11567 can only be cast to supersede Silver Point's
6 prior ballot on that case. The concept is it can't be counted
7 twice let it be counted once.

8 Based upon that agreement the Silver Point 3018
9 motion is being withdrawn.

10 THE COURT: Okay. Does that change the class votes
11 in any way?

12 MR. BERGER: No. No, Your Honor, it doesn't tip the
13 ballots.

14 THE COURT: That's what I meant. Okay.

15 MR. BERGER: Your Honor, item number one on the
16 calendar is the Bank of America motion for a temporary
17 allowance of claims. That's being withdrawn by Bank of
18 America. They also had a plan objection that is also being
19 withdrawn. I don't know if counsel is on the record -- on the
20 phone. There is an agreement, Your Honor, those -- the plan
21 objection and that motion are being withdrawn.

22 THE COURT: Okay. And again, I think Mr. Butler
23 answered this but are the debtor's providing any consideration
24 or is there any understanding in connection with that
25 withdrawal?

1 MR. BERGER: No, Your Honor.

2 THE COURT: And that's the same for the other --

3 MR. BERGER: Bank of America --

4 THE COURT: -- movants who have withdrawn their
5 objections.

6 MR. BUTLER: That is correct, Your Honor.

7 MR. BERGER: Yes.

8 THE COURT: Okay. All right.

9 MR. BUTLER: One moment, Your Honor. Thank you, Your
10 Honor. The first matter, I think, we'd like to deal with
11 following the 3018 is to give the Court a summary of where we
12 are and the recent objections that have been filed in terms of
13 what is still a live objection and what objections have been
14 resolved.

15 THE COURT: Okay.

16 MR. BUTLER: To do that, Your Honor, I think the --
17 probably the best document to use would be Exhibit 158 and
18 there is, at Exhibit 158, we go to the last pages of that
19 please, it will be on the -- I've posted it on the screens. We
20 have a chart of the -- of the objectors to confirmation. And
21 what I'd like to do is just walk through the chart and indicate
22 the objections that are -- have been resolved and the
23 objections that are live.

24 The first objection that I would like to deal with,
25 Your Honor, is the objection at docket number 11471 of Caspian

1 Advisors et al. That has been supplemented by various
2 additional objections filed subsequently by the bondholder
3 group represented by Goodwin -- Goodwin Proctor including at
4 docket number 11951.

5 THE COURT: Are all of those objections by the same
6 objectors?

7 MR. BUTLER: No, Your Honor. There is -- in fact we
8 had actually compared a chart and Exhibit 95 has a chart in it.
9 Let me just find it, one second. The short answer is, Your
10 Honor, they -- the parties that Goodwin Proctor represents that
11 been objecting have changed during the course of --

12 THE COURT: I guess the issue I'm raising is -- is
13 probably -- comes in two parts, consistent with earlier
14 procedures adopted for the confirmation process. The parties
15 were permitted to file preliminary objections. And that was
16 something they could do to get discovery rolling. As I recall,
17 about half of the clients of Goodwin Proctor who filed a
18 preliminary objection or was signed on to a preliminary
19 objection did not file a supplement. And I took that to mean
20 that they weren't objecting anymore.

21 MR. BUTLER: Your Honor, I think that Mr. Brilliant
22 can address that. But I think we -- on Exhibit 95, page 59, we
23 summarized the ad hoc bondholder group. And your right, that
24 group has changed. There's -- it's up on the screen now. That
25 group belonged from the disclosure state objections through the

1 various confirmation objectors have changed. And you can see
2 that the current objectors, on the January 11th objection, are
3 Davidson Kempner, Elliot Associates, Nomura, North East
4 Investors and White Box. Mr. Brilliant's been very careful and
5 I think very thoughtful in updating his 2019s in this case. I
6 think I received the sixth or seventh one of those updates last
7 night, in which they clarified who is on their committee or
8 group -- their group of folks that they represent. And I
9 believe that 2019, what my recollection is, that they listed
10 six parties on it, the five that are part of the January 11th
11 objection and an affiliate of Silver Point Capital who is
12 represented by them but is not a party to the objection. Do I
13 have it correct, Mr. Brilliant?

14 MR. BRILLIANT: Mr. Butler has it correct, Your
15 Honor. And Your Honor does have it right. Subsequent to
16 filing the preliminary objection Caspian, Castlerigg,
17 CR Intrinsic and Everest Capital decided not to continue to
18 object. And I believe we noted that in our objection in a
19 footnote.

20 THE COURT: Okay.

21 MR. BRILLIANT: The other parties continue to object.
22 We did not add any additional parties to the objection that was
23 filed last Friday.

24 THE COURT: And the other parties, the other five,
25 have they -- in their objections that are extent, are they all

1 in each objection? They're acting together? I'm not saying
2 acting as a group, I'm saying are there any objections filed by
3 anyone other than those five together? For example, did Davis
4 and Kempner file a separate objection?

5 MR. BRILLIANT: To confirmation, Your Honor?

6 THE COURT: Yeah.

7 MR. BRILLIANT: No, Your Honor.

8 THE COURT: Okay.

9 MR. BRILLIANT: At this point in time, and I thought,
10 you know, I was flipping through our objection and I don't know
11 if it got deleted or if it's something I'm just not finding
12 very quickly, I thought we had indicated that with respect to
13 the final objection with respect to the parties who had filed a
14 preliminary that it was withdrawn with respect to them.
15 Without going into detail, some of them sold and were no longer
16 involved and some just chose --

17 THE COURT: No, I'm just trying to figure out what
18 are the --

19 MR. BRILLIANT: -- not to continue to object.

20 THE COURT: -- the extent objections and --

21 MR. BRILLIANT: Right.

22 THE COURT: -- and I think it's clear now.

23 MR. BRILLIANT: Right. And then with respect to the
24 MDL objection, which I know we're not there, there's one
25 additional party, SPCP an affiliate of Silver Point Capital, is

1 on that objection --

2 THE COURT: Okay.

3 MR. BRILLIANT: -- as well as the -- you know, some
4 but not all of the remaining bondholder objectors that we filed
5 the confirmation objection on behalf of.

6 THE COURT: Okay.

7 MR. BUTLER: So, Your Honor, with respect to the
8 objections, I've indicated on the record the objection numbers
9 that have been filed by the bondholders represented by Goodwin
10 Proctor. The debtors have reached a settlement with them that
11 we would ask, Your Honor, be approved under Bankruptcy Rule
12 9019 so that we may proceed with this confirmation hearing
13 after having the objecting parties represented by Mr.
14 Brilliant's firm having withdrawn their objections to
15 confirmation and their related objections to the MDL and other
16 matters.

17 We have -- the understanding that we have with the
18 bondholders is that the objecting parties will withdraw their
19 objection to the plan. They will withdraw the expert report of
20 Marianne Anne Keller and they will withdraw any and all
21 objections on related matters to be heard in connection with
22 the confirmation hearing, including any objections they may
23 have, for example, to the MDL motion or any other matters on
24 the confirmation agenda subject to Your Honor's approval of the
25 following agreement.

1 The agreement would be that the debtors would agree
2 to reimburse the bondholders for the actual, reasonable and
3 documented fees and expenses incurred by Goodwin Proctor, the
4 law firm of Klestadt & Winters, K-L-E-S-T-A-D-T and Winters,
5 and Marianne Keller & Associates, the expert witness, that have
6 incurred from September 1, 2007 through today, January 17,
7 2008, in connection with the representation of the Goodwin
8 Proctor Group's current and former noteholder clients as it
9 relates to the debtor's Chapter 11 cases up to an aggregate
10 maximum of five million dollars.

11 The debtors have agreed and have made the business
12 judgment under Section 363 to make -- proposed to make these
13 1124(a)(4) payments pursuant to a settlement at this
14 confirmation hearing of these objections that we're asking Your
15 Honor to approve under Bankruptcy Rule 9019. The terms of the
16 approval, if Your Honor chooses to grant it, would be included
17 in the confirmation order which terms will be consistent with
18 this agreement I'm placing on the record today.

19 The objecting parties have acknowledged to the
20 debtors, in advance, that the Bankruptcy Court may require
21 their professionals to file a final fee application and have
22 agreed to a standard for that review which would be an
23 evaluation of the reasonableness of the fees and expenses
24 incurred for the services rendered under the totality of the
25 circumstances.

1 The debtors have also agreed to use their reasonable
2 best efforts to obtain Court approval of the consummation of
3 this settlement, including the payment of the fees and expenses
4 that are reasonable. And that would include preparing and
5 filing supporting pleadings and, if necessary, propounding
6 testimony in support of the fee application or the settlement
7 once the debtors have reached their own independent conclusion
8 that I've described in this settlement has been met.

9 And we also -- that, Your Honor, is the sum and
10 substance of the settlement we're asking Your Honor to approve
11 on the record today.

12 MR. BRILLIANT: Your Honor, Allan Brilliant on behalf
13 of the bondholders that Mr. Butler had mentioned. That is, in
14 fact, our settlement with just one clarification, which I don't
15 believe is controversial. We would withdraw the objections
16 that, you know, we had filed on behalf of the noteholders. One
17 of the members of our group, SPCP as Mr. Butler had already
18 mentioned in connection with 3018, had filed an objection in
19 connection with some trade claims they own. We are not
20 settling on behalf of anything other than, you know, bondholder
21 issues and objections to the confirmation of the plan, the MDL
22 and the objections under 3018 that we had filed against the
23 motions by Bank of America and FCI.

24 THE COURT: But what -- the SPCP is that -- that's
25 been resolved, I thought? I thought that was what Mr. Berger

1 reported.

2 MR. BRILLIANT: It has, Your Honor. I just wanted to
3 make sure --

4 THE COURT: It's not covered by this settlement.
5 It's a separate thing.

6 MR. BRILLIANT: Right. It's not covered by the
7 settlement. That's all I wanted to make sure Your Honor
8 that -- that there wasn't any misunderstanding as to what it
9 was that we were withdrawing since, you know, I'm not their
10 counsel in connection with anything other than their role as
11 a -- as a noteholder.

12 THE COURT: All right. Does anyone want to address
13 this motion?

14 MS. LEONHARD: Good morning, Your Honor. Alicia
15 Leonhard for the United States Trustee. First, I'd like to say
16 that the United States Trustee received notice of this motion
17 about five minutes ago. So, the notice issues may be a problem
18 except the Court has the authority to waive the notice
19 requirements under Section -- Rule 2002.

20 The U.S. Trustee's main objection to this settlement
21 is the standard of review of these fees. The debtors have
22 actually created a new standard which is reasonableness under
23 the totality of the circumstances. Now, I understand
24 reasonableness. I don't -- I don't think there's any -- a
25 standard for any of those -- and I know what totality of the

1 circumstances is too, but I don't know exactly how applies
2 reasonableness to fees under the totality of the circumstances.
3 The only basis upon which a creditor or a committee of
4 creditors may obtain or apply for fees and expenses under the
5 Bankruptcy Code is Section 503(b). Now I know Mr. -- I noticed
6 that Mr. Butler backed off calling this group a committee
7 calling them a group of folks. But I think if you look at
8 503(b) it simply says a creditor or a committee of creditors
9 among other people may apply for their reasonable fees and
10 expenses under 503(b) if they have -- if they have made a
11 substantial contribution to the case.

12 That is the basis on which the U.S. Trustee objects
13 to this settlement. If the Court would approve a 503(b)
14 standard, I don't think the U.S. Trustee would have any issue
15 with it. But I do not believe it is our view that the parties
16 cannot settle away provisions of the Bankruptcy Code that are
17 put there for a specific purpose which is to, on the one hand,
18 encourage participation but on the other hand limit the fees so
19 that cases will not become administratively insolvent or
20 overburdened with professional fees. So on that basis the U.S.
21 Trustee would request that the Court not approve the settlement
22 and -- today. Thank you very much.

23 THE COURT: Now, there are times when creditors get
24 fees approved under a plan -- under a plan and also in
25 connection with the case without going through the 503(b)

1 application. There's, for example, the provision of fees in
2 DIP agreements.

3 MS. LEONHARD: Yes, Your Honor. But that's pursuant
4 to a contract. I mean, there's certain conditions under which
5 people get fees. The -- for example the Appaloosa and the plan
6 funders, their fees are being reimbursed pursuant to a
7 contract. But Mr. -- the counsel for Appaloosa, they're coming
8 in with a 503(b) application for the fees incurred prior to the
9 entry into an application.

10 THE COURT: What about 1129(a)(4)?

11 MS. LEONHARD: I'm sorry?

12 THE COURT: What about 1129(a)(4)?

13 MS. LEONHARD: Well, I understand 1129(a)(4) but
14 1129(a)(4) is a statute of general application. And it simply,
15 under rules of statutory construction, does not override a
16 statute which is specific, like Section 503(b). And so I think
17 that you have to -- you can't use 1129(a)(4) to override
18 Section 503(b).

19 THE COURT: But it actually does use a different
20 statute. It says as reasonable.

21 MS. LEONHARD: It says reasonable but it -- but it's
22 very broad. And I must also say that there is a reasonableness
23 component to Section 503(b). But I don't think that that
24 provision, and in fact I've never seen case law that
25 contemplates that provision applying to any party whose fees

1 should be payable under 503(b) or another provision of the
2 Code. And so, for that reason, the U.S. Trustee objects to
3 this settlement.

4 THE COURT: Okay.

5 MS. LEONHARD: Thank you, Your Honor.

6 MR. BUTLER: Your Honor, I have just a short
7 response. First, the standard that was enunciated here that we
8 negotiated with the -- with the objecting parties was done in
9 consultation with counsel to the Official Committee of
10 Unsecured Creditors who, in fact, had suggested a portion of
11 the standard as we had been reviewing what we thought would be
12 reasonable on behalf of the estate.

13 Second, there are examples in this case where there
14 have been, as parts of settlement at contested hearings, fees
15 that have been paid and have been approved by the Court. An
16 example of that, ironically, involved Mr. Brilliant and his
17 firm in connection with the representation of another group of
18 creditors at the time we were trying to get the DIP hearing put
19 in place, early on in the case. Where, I believe, the fees
20 were paid.

21 I also think, and where I disagree with the United
22 States Trustee, I also believe that 1129 is not a -- a
23 provision of, sort of, general construction. It is a very
24 specific set of provisions dealing with a very special hearing
25 under the Bankruptcy Code and that is a hearing on confirmation

1 of a plan of reorganization. And what we're proposing to do
2 here is not to make payments to Goodwin Proctor who, I believe,
3 has already been paid a good proportion of the fees they've
4 incurred in this case; this is an agreement to reimburse
5 objecting creditors. And we're using as the standard for
6 reimbursement these particular payments and limiting it to
7 this -- in this amount. Which is, frankly from our
8 perspective, a much better deal than simply making a five
9 million dollar payment to the bondholders or taking some other
10 tact with them.

11 We also believe, Your Honor, that under Section 363
12 of the Code we can use property of the estate for a matter
13 that's in the best interest of the estate. And we believe an
14 1129(a)(4) payment under Bankruptcy Rule 9019 when we are
15 settling a broad ranging set of objections which, while not to
16 in any way denigrate any other objections that have been filed
17 by any other party that are still going to be heard today, I
18 think, are fairly evaluated as the most comprehensive
19 objections that were asserted against the debtors in connection
20 with confirmation. We're fully prepared to try those matters.
21 We fully prepared, we believe we'll prevail at the end of the
22 day on those matters. But having said that, I think that --
23 and, you know, I would ask the Court to consider under the
24 salient factors of Bankruptcy Rule 9019, the issues that are at
25 controversy here, the cost to the estate, the potential damage

1 to the estate of having to have a protracted valuation
2 litigation fight here at confirmation with battling experts
3 when those matters can all be resolved having negotiated with
4 the bondholders to this result. From the debtor's perspective
5 there is just no question in our minds that this is in the best
6 interest of the estate. It's in the best interest of all of
7 the creditors of the estate. And we don't believe that 503(b)
8 is a bar -- was intended by Congress or in fact sits in the
9 Bankruptcy Code as a bar to a 9019 settlement in these
10 circumstances at a confirmation hearing.

11 MS. LEONHARD: Your Honor, I'd just like to make one
12 comment for the record. Section 503(b) does not refer to
13 reimbursement to professionals. It clearly refers to
14 reimbursement to creditors or their -- or committees of
15 creditors and other parties. So the fact that the debtor has
16 made an agreement with these bondholders, again, puts it
17 strictly and squarely in the purview of Section 503(b). Thank
18 you.

19 THE COURT: Okay. All right. The debtors made an
20 oral motion for approval of a settlement with the objecting
21 bondholders represented by Goodwin Proctor. First, I am not
22 troubled by the fact that the objection -- I'm sorry, that the
23 motion was made in this manner on the morning of the
24 confirmation hearing. The Court, as the parties are well
25 aware, reviews a settlement under a fairly flexible standard

1 that takes into account a number of factors. First and
2 foremost, the Court's assessment of the merits of the
3 underlying controversy. Second, the likely cost to the estate
4 of continuing to a decision on the merits, both in terms of out
5 of pocket costs as well as delay; third, the views of the key
6 parties in interest who would be affected by the settlement.
7 And, finally, an overall analysis as to whether the settlement
8 is in the best interest of the estate and fair and equitable.
9 That standard's flexible because sometimes settlements begin or
10 are proposed at the very early stages of a litigation.
11 Sometimes they're proposed on the eve of trial. If they're
12 proposed on the eve of trial, as is the case here, the Court is
13 far more familiar with the merits. And while the Court is not
14 required to conduct any sort of mini trial on the merits, it's
15 a given here that I'm fully familiar with the issues on the
16 merits having read the objection to the plan as well as the
17 related objections and the supporting exhibits. And therefore,
18 that factor is extremely important here and one that does not
19 require, I believe, further notice or briefing.

20 Secondly, the key parties in interest are clearly
21 present here today, since this is the confirmation hearing and,
22 with the exception of the U.S. Trustee, are not opposing the
23 relief sought.

24 Finally, I do need to consider whether the settlement
25 ultimately, of course, is in the best interest of the estate in

1 light of the foregoing as well as whether it's fair and
2 equitable. Which, as the Second Circuit in the Iridian case,
3 has reminded us is a term of art.

4 The U.S. Trustee opposes the settlement not on the
5 merits where there, I believe, she's deferring to the parties
6 and the debtor's analysis and ultimately to the Court's
7 analysis. But rather based on her assessment of the procedure
8 for dealing with professional fees in Chapter 11 cases. That
9 view is one that is itself, I believe, unsettled. The statute,
10 on its face, contains two separate provisions that are relevant
11 here dealing with the allowance and payment of fees. They've
12 been cited at oral argument, Section 503(b) and Section
13 1129(a)(4). (a)(4) is clearly not limited to professionals for
14 the debtor or the plan proponent and has its own standard, a
15 reasonableness standard.

16 The standard that the parties have agreed to her,
17 with the assistance of the Creditors Committee, is one that is
18 set forth in neither 503(b) nor 1129(a)(4). It was one that
19 they've agreed to as part of a settlement. It is more onerous
20 than the (a)(4) reasonableness standard. It is less onerous
21 than the 503(b) standard although it is certainly conceivable
22 to me that there is a distinct possibility that there would be
23 substantial overlap based on whatever the firm ultimately
24 submits on notice to parties in interest. And that it's
25 certainly likely that a significant portion of its fees could

1 fall within the 503(b) standard.

2 Given the uncertainty as to what standard governs, I
3 believe that that issue is one that can be settled as well. It
4 is clear to me, and this is part of the agreement, that in any
5 event the right to receive the payment is contingent upon
6 submission of an application under the terms of the settlement
7 on notice to parties in interest, that is the service list,
8 with an opportunity to object pursuant to the agreed upon
9 standard, reasonableness under the totality of the
10 circumstances.

11 What troubles me about the settlement, and I, in
12 fact, reached this issue only based on the answer to my initial
13 questions, is that a settlement in return for the withdrawal of
14 plan objections and related objections. As phrased, and I
15 believe I heard you correctly on this Mr. Butler, it would,
16 however, cover the fees incurred by Goodwin Proctor's current
17 and former clients. I don't see how the former clients who
18 have withdrawn their objections would necessarily have any
19 merit or consideration provided in return for the withdrawal of
20 objections today, since they've already been withdrawn.

21 On the other hand, it is also the case that the
22 existing clients who have extent objections may have used some
23 portion of that work and the consideration they're providing to
24 the estate is the withdrawal of those objections, premised upon
25 work that was done, perhaps, before they became members of this

1 group.

2 So it seems to me that the phrase and former clients
3 should not apply here. However, the reasonableness under the
4 totality of the circumstances may include fees that were
5 incurred before -- conceivably may include fees that were
6 incurred before the members who -- who later joined the group
7 and are still extent did so.

8 With that caveat, based on my understanding of the
9 issues that are being settled here, I believe the settlement is
10 fair and in the best interest of the estate. But I believe it
11 would have to have that adjustment to it.

12 MR. BRILLIANT: Your Honor, can I ask for a
13 clarification. I'm not sure I understand Your Honor's ruling.
14 The way that --

15 THE COURT: Let me -- let me explain it. And I
16 appreciate it; it may have been a little cryptic. I don't
17 think that the burden should be on an objector to your fee --
18 your upcoming application to show, under the totality of the
19 circumstances, that fees incurred by former clients shouldn't
20 be covered because it would not be reasonable. I believe the
21 burden should be on you and the current clients to show that
22 fees that were incurred before they became part of the group
23 and they were arguably incurred for former clients would still
24 be reasonable under the totality of the circumstances. It's
25 not an absolute bar to being reimbursed for the amount that

1 they paid. But it -- it shouldn't cover, out of the box,
2 people who have already withdrawn their objections since I
3 don't see why the debtors would settle something that's already
4 been withdrawn.

5 MR. BRILLIANT: All right. I think I understand,
6 Your Honor. So, you know, the way our clients have paid is on
7 a pro rata basis. So, you know, to the extent that we have an
8 objection that is still outstanding, some portion of the
9 discovery the creation of that document is paid by clients who,
10 you know, may have decided on -- on Friday --

11 THE COURT: If they were building on that they can --
12 they have a chance to show me that that would be reasonable
13 under the totality of the circumstances, that they were
14 building on what someone else paid as a pro rata basis.

15 MR. BRILLIANT: I understand, Your Honor.

16 THE COURT: Okay. Okay.

17 MR. BRILLIANT: With -- you know, thank you, Your
18 Honor, for approving the settlement. With the approval of the
19 settlement I have the authority, from my clients, to withdraw
20 our preliminary objection to confirmation, our supplemental
21 objection to confirmation, our objection to the MDL settlement,
22 as well as our two objections to Rule 3018 to the extent that
23 it's relevant given the fact that they've already been dealt
24 with. The objection to the Bank of America motion for
25 temporary allowance as well as the FCI claims estimation motion

1 that we objected to. Your Honor, obviously the vote did not
2 come out the way my clients expected it to. There were changes
3 in the macro-economic environment which, to some extent, I'm
4 sure had some effect on the ultimate vote. After having
5 discussions with the debtors after the vote came out, it became
6 pretty clear to us that although, you know, 500 million dollars
7 or so of holders of the notes voted against the plan that we
8 did not have the one third that we expected to have. And
9 although we had remaining objections that the prudent thing, in
10 light of what could be a bruising and potentially damaging
11 confirmation hearing to all parties including, you know, the
12 future owners of the company which would have included my
13 clients, you know, might occur and might not be in anybody's
14 best interest. And so we reached a settlement which, although
15 disappointing to us, we believe is fair to everybody under the
16 circumstances.

17 Your Honor, we'd like to thank you and your chambers
18 for all your courtesy and assistance during the case. At
19 times, I know, that we might have been frustrating to the other
20 parties and to Your Honor to the extent that, you know, we were
21 frustrating or, you know, we apologize for that. But I can
22 assure you, we were just trying to do the best we could for our
23 clients under the circumstances. With the approval of the
24 settlement and the withdrawal of our objections, if Your Honor
25 doesn't need us to, you know, continue to be present in court

1 we would ask Your Honor to, you know, release us today so that
2 other parties who continue to have objections can have seats at
3 the table, so to speak, and have more room in the courtroom to
4 do what they need to do.

5 THE COURT: Okay. That's fine. You all are excused.
6 I did not summarize the reasons for approving the settlement
7 but, again, my assessment is largely based upon the cost and
8 the adverse effect on the debtors of protractive litigation as
9 well as an assessment of potential litigation at risk. And I
10 certainly took into account the debtor's and the committee's
11 own assessment of that. You all generally don't come to the
12 claim objection hearings but these debtors are very diligent,
13 generally, in dealing with claims against their estates and
14 very aggressive in trying to reduce them.

15 So, again, I find the settlement reasonable as set
16 forth on the record.

17 MR. BUTLER: Thank you, Your Honor. Thank you,
18 Mr. Brilliant.

19 MR. BRILLIANT: Thank you, Your Honor.

20 MR. BUTLER: Your Honor, turning back to the end of
21 the table of Exhibit 158, which summarizes the objection. If
22 we could go to the table, please? Thank you, Your Honor. I'm
23 looking at pages 26, 27, and 28 of that document.

24 Okay. On page 26 of the document, we'll just run
25 through the objecting parties that have been listed on

1 Exhibit 158. The -- we've just dealt with docket number 11471,
2 the Caspian Capital Advisor's objection which has now been
3 withdrawn. The two next objections, 11475 from the UAW and
4 11580 from the UAW, both remain outstanding. Going to page 27,
5 the 11582 the IUE objection that also is a supplemental
6 objection; it remains outstanding as does the -- and I know
7 they're here to prosecute.

8 The next objection that remains outstanding is the
9 objection of Cheryl W. Carter at docket number 11753. And I
10 would ask if Ms. Carter or anyone representing Ms. Carter is
11 present at the confirmation hearing to prosecute the objection?

12 THE COURT: Ms. Carter, are you on the phone, or
13 anyone representing her? Okay.

14 MR. BUTLER: Your Honor, I --

15 THE COURT: Why don't you briefly go ahead on this --
16 on this particular objection.

17 MR. BUTLER: Excuse me, Your Honor?

18 THE COURT: Why don't you just briefly address this
19 objection?

20 MR. BUTLER: Your Honor, this is an objection --
21 Ms. Carter has an objection at 11753, also at 11806 in which
22 she objects to the -- basically to the entire confirmation
23 process of the plan. It's a one page --

24 THE COURT: I remember this was a one-page of --

25 MR. BUTLER: -- non-specific --

1 THE COURT: -- sort of, frustration. All right.

2 MR. BUTLER: May I have one moment, Your Honor?

3 THE COURT: Yeah. Mr. Butler, I guess I'm a little
4 confused. I thought you were going to go through the ones that
5 were resolved first.

6 MR. BUTLER: I was just walking straight through. I
7 could --

8 THE COURT: If anyone was showing up --

9 MR. BUTLER: Okay.

10 THE COURT: -- that -- just to hear that their
11 objection was resolved or resolved based upon something to be
12 recited on the record they could then leave if they wanted to.

13 MR. BUTLER: Let me -- let me do those, Your Honor,
14 first.

15 THE COURT: Okay. Because I -- you could do it
16 either way but I -- I'd rather address the remaining objections
17 all -- you know, after you've made a showing on the voting and
18 the like.

19 MR. BUTLER: Okay.

20 THE COURT: And then we can turn to the objections.
21 But -- so why don't we just deal with the ones that have been
22 resolved.

23 MR. BUTLER: I mean, several objection then, Your
24 Honor, are as follows, 11754 the Texas Taxing Authorities;
25 11791 Kennesaw LLC; 11792 Comerica Leasing Corporation; 11804

1 Freedenberg-NOK et al; 11847 Hidalgo County et al; 11849
2 Lear Corporation; 11852 Comerica Leasing Corporation; 11853,
3 again, Kennesaw LLC and 11855, again, Freudenberg-NOK et al;
4 11867 Cooper Standard Automotive; 11871 American Axle &
5 Manufacturing; 11872 Bank of America Leasing and Capital LLC;
6 11881 Robert Bosch Corporation; 11885 The Michigan Department
7 of Environmental Quality; 11906 Board of County Commissioners
8 of Johnson County; 11937 Liquidity Solutions Inc.; 11949 the
9 Pension Benefit Guarantee Corporation; 11950 the United States
10 of America; 11951 is the Davidson Kempner that's a supplemental
11 objection that was just withdrawn by Mr. Brilliant; and 12075
12 the Board of County Commissioners of Johnson County, Kansas.

13 Your Honor, in the case of a number of these
14 settlements there is specific language we've agreed to in the
15 confirmation order to clarify certain points and we'll deal
16 with those points. We have agreed language that we will deal
17 with when we get to that point in time.

18 THE COURT: So the parties that have that language,
19 they've seen it?

20 MR. BUTLER: They've seen it.

21 THE COURT: Okay.

22 MR. BUTLER: It's been negotiated. We don't intend
23 to change it.

24 THE COURT: Okay. So those were all withdrawn
25 objections?

1 MR. BUTLER: Those were all withdrawn objections.
2 Obviously anyone who had language if it didn't end up in the
3 confirmation order I would expect that their -- you know, that
4 they have that expectation that their language will go in.

5 THE COURT: Okay. All right. And I have not heard
6 anyone contradicting you. So I'll assume those have all been
7 withdrawn.

8 MR. GREGG: Your Honor, it's John Gregg on behalf of
9 Bank of America NA. Bank of America has agreed to withdraw its
10 objection based on the understanding that (indiscernible) and
11 security interest will provide and continue post confirmation
12 that reaffirmation of certain guarantees and attorney fees for
13 which the Bank of America believes it is entitled to, will be
14 addressed as part of the cure process. And finally, it's Bank
15 of America's understanding that a confirmation will, in no way,
16 (indiscernible) res judicata with respect to a secure of any
17 defaults under the leases between the debtors and Bank of
18 America.

19 MR. BERGER: Your Honor, Neil Berger for the debtors.
20 Counsel is referring to section 5. -- article 5.1 of the plan
21 which addresses preservation of secured claims. Your Honor had
22 entered a number of different stipulations and order in this
23 case, some of which address the perfection of the Bank of
24 America liens and the petition date. And yes, there is an
25 article 8.2(b) of the plan that provides for addressing

1 monetary and non-monetary cure issues post confirmation date.

2 THE COURT: So you agree with Mr. Gregg's status?

3 MR. BERGER: I have no objection to his
4 representations.

5 THE COURT: Very well. Okay.

6 MR. BUTLER: Your Honor, we were just having a
7 sidebar during Mr. Berger's presentation with counsel to the
8 PBGC and I just want to be clear. What I said I want to say
9 again so everyone hears it. The government, in particular, and
10 government agencies have agreed to certain language that we've
11 agreed to put in the confirmation order. Obviously if that
12 language does not end up in the confirmation that Your Honor
13 signs their objections are not withdrawn.

14 THE COURT: Right.

15 MR. BUTLER: Okay. And their objections are -- all
16 these objections are provisional.

17 THE COURT: That's the -- that's the case for anyone
18 who has agreed to withdraw their objection contingent upon that
19 language or the language they've agreed to appearing in the
20 confirmation order.

21 MR. WILSON: Eric Wilson for PBGC, Your Honor. Thank
22 you for that clarification.

23 THE COURT: Okay. Thanks.

24 MR. BUTLER: All right. Your Honor, the other thing
25 I'm also advised that Auto Modular Assemblies Inc., at 11876

1 has also withdrawn their objection.

2 So, Your Honor, those are all of the settled
3 objections. Would you prefer me now going to the voting and
4 then I'll come back to the others?

5 THE COURT: Yes. Yes.

6 MR. BUTLER: Okay. Your Honor, the first thing I'll
7 do then, with Your Honor's permission, is make a brief
8 presentation on voting and then ask -- offer the declarants who
9 have filed voting reports for the -- the --

10 THE COURT: Okay.

11 MR. BUTLER: So I'd like to go to Exhibit 95 for the
12 screens, Exhibit 95, page 55.

13 Your Honor, with respect to the voting results, we
14 have more than eighty percent of the ballots case in the
15 Chapter 11 cases were cast to accept the plan. This -- page 55
16 of Exhibit 95 reports to Your Honor, both by numerosity and
17 claim amount, based on the classes that are specified under the
18 plan the specific percentage results with respect to each of
19 the classes.

20 The only class that was deemed to have rejected,
21 assuming Your Honor accepts the voting reports we'll be
22 introducing in a few minutes, would be Delphi Diesel Systems
23 Corp. Class 6C where the percentage voting to accept was 48.4
24 percent, falling short of the statutory two thirds requirement.

25 THE COURT: That's -- that's the dollar amount?

1 MR. BUTLER: Yes, that's the dollar amount, Your
2 Honor. That's the dollar amount. There -- ninety-one percent
3 of the ballots that were voted, voted in favor. But only
4 forty-eight percent of the amounts in that class voted in
5 favor, 51.6 percent voted against and therefore that was --
6 that was -- that class did not carry.

7 If we could go to page 58 of Exhibit 95. Page 58 of
8 Exhibit 95, Your Honor, one of the things you asked us to do at
9 the disclosure statement hearing and we indicated to you it was
10 our intention to do, was to tabulate votes. While not formal
11 sub-classes under the plan, to tabulate votes in class 1C,
12 which is by far the largest class that voted in terms of -- I
13 shouldn't say by far because General Motors had a very large
14 claim. But other than the GM claim it was by far the largest
15 class, in dollar amounts, and it did exceed the GM class.

16 And here you can see, on the numerosity side, all
17 three -- segmenting it in senior note claims, TOPrS claims and
18 all other class 1C creditors, which would have included trade
19 claims in the DAS Delphi Group, that all of those classes
20 exceeded the statutory requirement of fifty percent by a very
21 healthy margin; the lowest seventy-three percent, the highest
22 eighty-five percent. When evaluated by amount, and there was a
23 very large, in my experience, a very large percentage of
24 participation in the voting, for example, something like eighty
25 percent of the senior note claims actually voted, which is a

1 pretty high percentage. And you'll see that in terms of
2 numerosity or rather dollar amount, again, seventy -- almost
3 seventy-one percent of the note claims voted in favor.
4 Virtually all of the TOPrS claims that voted, voted in favor.
5 And some eighty-eight percent of all of the class 1C creditors
6 trade claimants and all of the other creditors that were in
7 that class with general unsecured, voted in favor.

8 So, what Mr. Brilliant was referring to in his
9 address to the Court was the fact that even when we segmented
10 on an informal basis class 1C to evaluate the composition of
11 that vote, as we indicated in the disclosure statement, Your
12 Honor asked us to indicate, would be done and that they would
13 be presented to the Court at confirmation. In fact, each of
14 those on a segmented basis, voted in favor.

15 I'd also point out to Your Honor that we also looked
16 at this by individual debtor. As Your Honor knows, this
17 case -- and we go to page -- Exhibit 95, page 56, we also
18 examined this informally on a debtor by debtor basis, in terms
19 of the general unsecured classes and how they -- and how they
20 would have been voted if you looked at this based on claims
21 that have been allocated to a debtor. In this instance forty-
22 nine -- thirty-nine of the forty-two classes -- excuse me --
23 forty-two debtors, if you evaluated this and tried to assess
24 this on a class basis by debtor also voted in favor
25 individually. There were three cases that fell out. In

1 addition to Delphi Diesel Corporation, Class 6C which was -- is
2 the natural fallout of that class having not voted, I reported
3 to you on that. There were -- within the Delphi DAS debtor
4 group, class group one, there were two entities that would be
5 deemed to have rejected; Delphi Electronics Holding, LLC
6 rejected because it split one to one. I think it had two votes
7 and they split them fifty-fifty. And on an amount basis, ASAC
8 Manufacturing General Partnership. So that, you know, even if
9 you looked at it on a debtor by debtor basis, thirty-nine of
10 the forty-two debtors voted in favor. And from the debtor's
11 perspective, most importantly, Delphi Corporation and Delphi
12 Automotive Systems LLC, the parent company and the principal
13 operating company in the United States, voted in favor of the
14 plan. You looked at it on a deconsolidated basis.

15 That -- the -- and that voting is, and we'll talk
16 about this later -- later on but on page -- Exhibit 95, page 54
17 that is laid out based on charts Your Honor has seen in the
18 past in terms of the groups that had, and we look at it on a
19 deconsolidated basis, all the groups that voted in favor or all
20 the green bars and you see the three red bars down in the lower
21 structure -- lower tiers of Delphi Corporation that if you
22 looked at this on a purely deconsolidated manner.

23 Your Honor, in terms of putting in evidence with
24 respect to this, we have two -- in the courtroom two witnesses
25 who are representing the voting agents in this case. First we

1 have Eric Kurtzman, the chief executive officer of Kurtzman
2 Carson Consultants LLC who was retained by the debtors both --
3 to do a variety of things in this case including acting as a
4 claims agent and taking other -- representing us in terms of
5 tabulating ballots in connection with the Chapter 11 cases
6 under the solicitation procedures order. And his declaration
7 is Exhibit 59 and the -- his deposition has been designated as
8 Exhibit 554.

9 Also, we have with us Jane Sullivan, who is the
10 executive director of Financial Balloting Group LLC, who was
11 retained in connection with the solicitation procedures order
12 and did all the public side tabulation here, the equity and
13 also tabulated the senior noteholder votes and reported on
14 that. And her deposition -- excuse me, her affidavit, the
15 declaration, is Exhibit 60 and her testimony, at deposition,
16 has been designated as Exhibit 553.

17 Your Honor, I would also note in terms of the actual
18 certification of the vote there is a custom here in the
19 Southern District of New York that if you act in a capacity as
20 a claims agent you shouldn't be the formal certifier of the
21 vote. And as we've indicated in the voting reports we filed,
22 James Sullivan who did not act in that capacity on behalf of --
23 and acted strictly in the capacity of a voting agent, certified
24 the entire vote and filed that in connection with her
25 declaration and those were filed yesterday on the record in the

1 docket.

2 Your Honor, I guess, what I'd like to do is first
3 move into evidence the declaration of Eric Kurtzman in Exhibit
4 59 and the deposition that's been designated for Mr. Kurtzman
5 at Exhibit 554 and offer Mr. Kurtzman for cross examination if
6 any party should desire to do that.

7 THE COURT: Is there any objection to the admission
8 of those two documents? All right. They're -- they're
9 admitted. Does anyone wish to cross examine Mr. Kurtzman? All
10 right. I'll accept those documents as his testimony.

11 (Declaration of Eric Kurtzman was hereby received as Debtor's
12 Exhibit 59 for identification, as of this date.)

13 (Deposition of Eric Kurtzman was hereby received as Debtor's
14 Exhibit 554 for identification, as of this date.)

15 MR. BUTLER: Thank you, Your Honor. Your Honor, I'd
16 like now to move the admission of the declaration of Jane
17 Sullivan at Exhibit 60 and the designated transcript of her
18 deposition at Exhibit 553. And I would move the admission of
19 those into evidence and present Ms. Sullivan for any cross
20 examination by the parties.

21 THE COURT: Okay. Does anyone object to the
22 admission of those two documents? They will be admitted then.
23 And does anyone wish to cross examine Ms. Sullivan on her
24 declaration, on the vote certification or the solicitation
25 voting calculation? Okay. I'll take those documents as her

1 testimony.

2 (Declaration of Jane Sullivan was hereby received as Debtor's
3 Exhibit 60 for identification, as of this date.)

4 (Deposition of Jane Sullivan was hereby received as Debtor's
5 Exhibit 553 for identification, as of this date.)

6 MR. BUTLER: Thank you, Your Honor. Your Honor,
7 based on the testimony -- the uncontroverted testimony on the
8 record with respect to voting, I'd ask -- I'd now move, Your
9 Honor, for the Court to accept the voting reports and
10 certification of the balloting agents and to find that these
11 reports are final and represents the summaries I've laid out
12 for Your Honor that they testified to in their declarations on
13 Exhibit 95.

14 THE COURT: I'll do that.
15 (Voting Reports and Certification of Balloting Agents were
16 hereby received as Debtor's Exhibit 95 for identification, as
17 of this date.)

18 MR. BUTLER: Thank you, Your Honor. So -- and we'll
19 deal, Your Honor, with -- just so the record is clear here, as
20 we move forward in the confirmation hearing there are two
21 classes we'll be dealing with as non-accepting classes. That
22 will be class 6C. We'll also be dealing with class 1I, which
23 under the plan receive no consideration. It is deemed, as a
24 matter of law, to have rejected the plan.

25 THE COURT: Let me just ask you -- get a sense of the

1 nature of the hearing, did any creditor of ASAC Manufacturing
2 object to the plan?

3 MR. BUTLER: Your Honor, I'm not specifically aware
4 of ASAC, whether that's the case. I do know that we have
5 settled the objections in class 6C.

6 THE COURT: Well, that was going to be my next
7 question. Are there any objections -- I mean, you obviously
8 still have to go through the cramdown?

9 MR. BUTLER: Yes. Liquidities Solutions Inc., was
10 the objecting creditor in class 6C. We resolved their
11 objection and they've withdrawn it. We had agreed with them
12 that we would use the same kind of good faith reconciliation of
13 their claims as we did with other trade claimants.

14 THE COURT: Okay.

15 MR. BUTLER: And that -- that was the only -- to my
16 knowledge the only objecting creditor.

17 THE COURT: Let me ask you a slightly different
18 question with regard to ASAC and Delphi Electronics, the two
19 DAS group companies that did not have -- on a company by
20 company basis an acceptance. Has any creditor of either of
21 those two companies objected to the plan on the basis of its
22 substantive consolidation provisions?

23 MR. BUTLER: I am not aware that they have, Your
24 Honor.

25 THE COURT: Okay.

1 MR. BUTLER: I've looked through all the objections.
2 I do not believe that they are members of those companies. I
3 would leave it to those creditors if I'm wrong. But it's not
4 my understanding that we have an objection on sub-con from
5 those creditors.

6 THE COURT: Okay. That was my understanding too.
7 But -- all right.

8 MR. BUTLER: All right. Your Honor, where do you
9 want me to go next? Do you want me to go to the -- what I was
10 going to try to do now was go through the live objections and
11 find out who's here to prosecute if that makes sense. How
12 would you like me to proceed with those objections?

13 THE COURT: Well, I actually -- I think it would be
14 better if you made your -- your showing under 1129(a). And I
15 have spent some time, and I know the parties will spend some
16 time, on the objections by the two unions. My thought is that
17 after making a showing on 1129(a) we should turn to the
18 objections other than the unions' objections.

19 MR. BUTLER: Okay.

20 THE COURT: And I guess it's fair to say that I
21 will -- for those who -- who are concerned that in going
22 through 1129(a) showings that they will have to raise their
23 objections then, I intended to take the union objections, sort
24 of, on a separate basis and I intend -- I assume the debtors
25 are, sort of, putting on a separate case on -- on that in

1 response to that.

2 MR. BUTLER: Yes, Your Honor. We're -- in fact the
3 order of our witnesses -- it would be useful to describe the
4 order of our witness and how we propose to deal with the case
5 and make sure that's acceptable to Your Honor.

6 The way in which we propose to offer our witnesses
7 today is to begin with John Sheehan our chief restructuring
8 officer who is going to deal with, principally, all of the
9 1129(a) issues; not all but many of them. And move from there
10 to specific witnesses that will -- that support Mr. Sheehan's
11 declaration. That is Colin Whitmer, an expert dealing with
12 Pricewaterhouse Coopers independent evaluation of portions of
13 the business plan.

14 Then moving to two company witnesses, Dean Unrue,
15 who's been responsible for the claims administration of the
16 case and to report to the Court where we are on the 1.45
17 billion dollar cap which the debtor's believe we are now below.
18 And also then Mr. Keith Stip (ph.) who would be dealing with
19 testimony on the General Motors settlement and the substantial
20 contributions being made by General Motors to the
21 reorganization cases.

22 We then move into the -- well some of those -- while
23 Mr. Whitmer is an expert we'd also then be moving in to the
24 principal expert part of the case dealing with valuation, best
25 interest, liquidation analysis and so forth, first with

1 Mr. Eisenberg from FTI and Mr. Resnick from Rothschild.

2 Having completed that portion of the hearing, Your
3 Honor, we would then move into the -- our principal, if you
4 will, compensation witnesses, Mr. -- and that would include Mr.
5 Naylor who is the chairman of the compensation committee on the
6 Delphi Board of Directors and Mr. Bubnovich who is the outside
7 expert from Watson and Wyatt. And then finally we'd conclude
8 our witnesses here at the confirmation hearing, at least our
9 direct witnesses, with the testimony of Mr. Miller who is, as
10 you know, the executive chairman of the company.

11 THE COURT: Okay.

12 MR. BUTLER: So that's our proposed order.

13 THE COURT: All right. Well, I think that makes
14 sense. And -- so why don't you proceed with that and in each
15 case if a party wishes to cross examine in connection with
16 their objection they should do so.

17 MR. BUTLER: Your Honor, I also -- Your Honor, I
18 would also -- one thing I also want to correct the record. One
19 of my colleagues reminded me that it may be that the -- one of
20 the other objections, and this would be the objection of Equity
21 Corporate Housing, they may be able to make a claim against
22 class 6C as well. So we'll have to deal with that when we get
23 to it.

24 THE COURT: Okay.

25 MR. BUTLER: I just wanted the court to be aware of

1 that.

2 THE COURT: All right.

3 MR. BUTLER: Your Honor, also -- now that Your Honor
4 has accepted the voting reports in this case and the work of
5 the voting agents is now final, may they be excused?

6 THE COURT: Yes.

7 MR. BUTLER: Thank you, Your Honor. Your Honor,
8 before I move into presenting our witnesses I would like to
9 deal with the exhibits in the case.

10 THE COURT: Okay.

11 MR. BUTLER: For which I think we have, with maybe
12 three exceptions, I think substantial agreement on. I'd like
13 to -- I'd like to move into evidence Exhibit 1 through 555.
14 I'll not repeat those, not go through them specifically. The
15 Court and parties have been provided with the joint exhibit
16 index. The joint exhibit index was the product of work done by
17 the debtors and the objectors. There was a meet and confer
18 held two days ago on the -- if I got my time right, times and
19 days are going together -- I believe it was on the 15th. At
20 which the objectors came together and with the -- and resolved
21 the -- at a meet and confer, the objections to the -- to the
22 joint exhibits. If I understand --

23 THE COURT: And that was pursuant to the order -- the
24 second order I entered on --

25 MR. BUTLER: Yes, that was pursuant to Your Honor's

1 scheduling order.

2 THE COURT: -- procedures.

3 MR. BUTLER: And so, the only -- I believe the only
4 objections that are outstanding, which I'm not sure need to be
5 argued now. I think the exhibits could come in subject to
6 resolving these three objections at some point during the
7 hearing, is I believe Wilmington Trust has an exhibit -- an
8 objection to paragraph 170 of Mr. Sheehan's declaration,
9 Exhibit 63. And I believe the UAW has objections to Mr.
10 Naylor's declaration at exhibit -- paragraph 25, that would be
11 Exhibit 66. And also to paragraph 48 of Mr. Miller's
12 declaration, Exhibit 67.

13 THE COURT: Okay.

14 MR. BUTLER: I think those -- I'm sorry.

15 MR. FOX: Your Honor, I just add to that. We have
16 the same objection that we've had in each case with respect to
17 the debtor's out of court presentations, the bank
18 presentations, that they're not being admitted for the truth of
19 the matter -- the matter set forth in those documents.

20 THE COURT: But simply that they were made.

21 MR. FOX: Exactly.

22 THE COURT: All right.

23 MR. BUTLER: And we're fine with that, Your Honor.

24 THE COURT: All right. So, except with regard to
25 those, I think it was three paragraphs --

1 MR. BUTLER: Right.

2 THE COURT: -- which will be dealt with when they
3 come up, I will admit those exhibits.

4 (Exhibits 1-155 were hereby received as Joint Exhibits 1-555
5 for identification, as of this date.)

6 MR. BUTLER: Thank you, Your Honor.

7 THE COURT: With the caveat -- again, for the
8 purposes set forth on the record --

9 MR. FOX: Thank you.

10 THE COURT: -- where relevant.

11 MR. BUTLER: All right. Your Honor, the -- Your
12 Honor, then the first order of our witnesses, the first witness
13 would be John D. Sheehan. He's the vice president and chief
14 restructuring officer of Delphi Corporation. He has been a
15 witness in this court on many occasions in the past. His
16 declaration in this -- for this confirmation hearing has been
17 now admitted as Exhibit number 63 and his deposition has been
18 designated and admitted at Exhibit number 552. And, Your
19 Honor, I would now offer him for cross examination by the
20 parties or any questions that the Court may have. Noting that
21 there is an objection to the extent by Mr. Fox to paragraph 170
22 of that declaration.

23 THE COURT: Okay. Does anyone wish to cross examine
24 Mr. Sheehan?

25 MR. FOX: Your Honor, I think before we get to that,

1 I'm not sure how you want to deal with that particular
2 objection to paragraph 170. It's actually where Mr. Sheehan
3 expresses, what I believe is intended to be, a lay opinion as
4 to the likelihood that the debtor will be able to obtain
5 financing commitments that it is presently seeking in the
6 capital markets.

7 THE COURT: That's right. You're not offering him as
8 an expert, are you?

9 MR. BUTLER: NO, we're not. It's a lay -- I mean,
10 he's our chief restructuring officer. This represents --

11 THE COURT: He's a business person trying to get a
12 sense of whether the likelihood of securing exit financing and
13 the other factors that he mentioned, mean that the plan is
14 feasible for purposes of 1129(a)(11).

15 MR. BUTLER: Correct. That's his opinion as the
16 chief restructuring officer of the company and that's all it's
17 being offered for.

18 THE COURT: Okay.

19 MR. FOX: Well -- I mean, the problem with -- with a
20 lay opinion with respect to the likelihood of the debtor
21 getting financing is that that's not the typical kind of area
22 where one would expect a lay person to be providing such an
23 opinion. This is more of a technical area that, you know, the
24 average person, even a chief restructuring officer, isn't
25 necessarily going to be considered an appropriate party to be

1 offering that kind of opinion.

2 THE COURT: Well, I don't -- I don't follow that. I
3 mean -- I think it's fair for a business person, particularly
4 one who's been involved in this process for the length that he
5 has and who has dealt with the people, in many cases on the
6 opposite side of the table in these matters, to have an
7 opinion. You can -- you can question it but it's -- I think
8 it's just -- it's just that.

9 MR. FOX: Well, there's also --

10 THE COURT: It's certainly different than an opinion
11 of someone who's not been involved in the process but --

12 MR. FOX: Well, that's true, Your Honor. The other
13 problem with it though is there's a foundational problem
14 because effectively it brings in hearsay because his opinion is
15 based on what, you know, banks and such have told them and
16 they're not here to testify about that. They're not being
17 offered as witnesses directly.

18 THE COURT: Again, it's not -- I don't think this is
19 being offered for the truth of what he's been told though.
20 It's just his view based upon --

21 MR. FOX: Well --

22 THE COURT: I mean, he has -- clearly in his
23 declaration discussed in more detail the basis for this
24 conclusion here.

25 MR. FOX: Right, which is based on out of court

1 statements that others have made to him.

2 THE COURT: And -- and again, they're not -- those
3 statements are what he has taken away from them. They're not
4 being admitted as true -- as the truth of what's been said to
5 him. So -- I -- I just don't see why it would be inadmissible
6 as opposed to what weight you might give to it.

7 MR. FOX: Thank you, Your Honor.

8 THE COURT: So I'll admit this. Again, with the
9 general caveat that the statements by third parties that
10 Mr. Sheehan has recounted and is relying upon in this paragraph
11 170 are not in his affidavit to show the truth of those
12 statements but merely that he is -- this is what he has heard.
13 Okay. So --

14 MR. BUTLER: So, Your Honor, I would --

15 THE COURT: So given that, does anyone wish to cross
16 examine Mr. Sheehan on his declaration or in respect of the
17 designated portions of his deposition? Okay.

18 THE COURT: I have one question for you Mr. Sheehan
19 and I could ask it of you or perhaps, before you come up here,
20 are any of the counsel involved in the exit financing, you
21 know, on reporting on exit financing and where it stands? I
22 guess what I would like to do is just see if there -- is there
23 any update from the date of this declaration that would, at
24 all, alter what Mr. Sheehan reports.

25 MR. FOX: I didn't fully understand --

1 MR. BUTLER: Can I have a moment, Your Honor?

2 THE COURT: Just to update it.

3 MR. BUTLER: Your Honor, I think Mr. Sheehan would be
4 the proper question to answer the Court's question.

5 THE COURT: All right. Well, let me just briefly
6 swear you in then.

7 (Witness is Sworn)

8 THE COURT: For the record, could you spell your
9 name.

10 THE WITNESS: John, J-O-H-N, D. Sheehan, S-H-E-E-H-A-
11 N.

12 THE COURT: Okay. And my question, Mr. Sheehan, and
13 I appreciate it's only four days difference but your
14 declaration's dated January 13, 2008 and it reflects that the
15 exit financing process got started, I believe, on January 5th,
16 is that correct?

17 THE WITNESS: January 9th, Your Honor.

18 THE COURT: January 9th, excuse me. My question is,
19 knowing what you know today with regard to that process, have
20 there been any developments in connection with that process
21 between the date of your declaration and today, that would
22 alter your view as to the likely outcome of that process?

23 THE WITNESS: The short answer to that question is no
24 Your Honor. And I'd be happy to provide you more detail if you
25 would like.

1 THE COURT: No, that's fine. All right. Does anyone
2 wish to cross examine Mr. Sheehan on that update? All right.
3 Again, I -- I'm being somewhat reticent because I do not
4 believe it's appropriate to get into negotiation strategies and
5 the like. But obviously if you -- if you have come across
6 information that would suggest that you should be, you know,
7 considerably more pessimistic, you should let me know.

8 THE WITNESS: I considered my answer carefully when I
9 answered.

10 THE COURT: Okay. Very well. Thank you.

11 MR. BUTLER: Your Honor, the next -- our next witness
12 is Colin E. Whitmer who is a partner in the transaction
13 services practice at Pricewaterhouse Coopers LLP. Mr. Whitmer,
14 would you stand and identify yourself please?

15 THE COURT: He's been standing.

16 MR. BUTLER: He is standing. Mr. Whitmer's
17 declaration is Exhibit 68 and his deposition has been marked as
18 Exhibit 516. They have been admitted into evidence and I
19 present Mr. Whitmer now for cross examination by the parties or
20 any questions the Court may have with respect to his
21 declaration.

22 THE COURT: Okay. Does anyone want to cross examine
23 Mr. Whitmer -- Whitmer, excuse me, on his declaration or the
24 designated sections of his deposition? Okay. I will accept
25 his declaration and the deposition provisions as his testimony.

1 MR. BUTLER: Your Honor, may Mr. Whitmer be excused?

2 THE COURT: Yes.

3 MR. BUTLER: Your Honor, the debtor's third witness
4 in support of its confirmation of its plan of reorganization is
5 Dean R. Unrue. Also a witness that the Court is familiar with.
6 He's been handling all of the company's claims administration
7 process in the Chapter 11 case. He is the claims administrator
8 at Delphi Corporation. And his declaration has been submitted
9 and admitted into evidence as Exhibit 65. And his deposition
10 has been admitted as Exhibit 515. Your Honor, I would present
11 Mr. Unrue for cross examination by the parties or questions by
12 the Court about any of the matters in connection with his
13 testimony but particularly with respect to his judgment that
14 the debtors have met the 1.45 billion dollar claims cap set
15 forth in the plan of reorganization.

16 THE COURT: Well, when you say that, is that in his
17 deposition?

18 MR. BUTLER: No, but I think it was discussed -- they
19 updated it in his declaration.

20 THE COURT: It's not in the declaration.

21 MR. BUTLER: We're about twenty or thirty million
22 dollars ahead.

23 THE COURT: Right.

24 MR. BUTLER: And the -- and maybe the best way, Your
25 Honor, just so it's clear because I think it is in there

1 somewhere would be if -- first off if anyone has any cross
2 examination it might be useful to get that update on where we
3 are, just so it's clearly in the record.

4 THE COURT: I would like to do that. I know there
5 have been some recent rulings. So Mr. Unrue, if you'd come up
6 please.

7 (Witness is Sworn)

8 THE COURT: And for the record, would you spell your
9 name?

10 THE WITNESS: It's Dean, D-E-A-N, R. Unrue,
11 U-N-R-U-E.

12 THE COURT: Okay.

13 DIRECT EXAMINATION BY

14 MR. BUTLER:

15 Q. Mr. Unrue, we just -- do you have any -- do you remember,
16 in your declaration, having testified about where the debtors
17 stood at the time of your declaration with respect to
18 compliance with the 1.45 billion dollar cap referenced in the
19 debtor's plan of reorganization for a limitation on what have
20 been called various names in this case but I would -- I refer
21 to them as general unsecured claims other than funded debt
22 claims. Have you -- do you recall that testimony in your
23 declaration?

24 A. Yes, I do.

25 Q. Do you have an update to that testimony?

1 A. Yes, I do.

2 Q. Could you please give the Court an update to where the
3 debtors stand with respect to that cap?

4 A. Okay. At the time of my declaration we were at 1.470,
5 twenty million dollars in excess of the cap. As you know, we
6 resolved two cases at the most recent claims hearing. The case
7 of White Source and Nu-Tech that put us slightly over the cap.
8 Since then we have, at least, three signed settlement
9 agreements that put us, currently, at three million under the
10 cap.

11 THE COURT: Okay. All right. Does anyone wish to
12 cross examine Mr. Unrue, either on his declaration, his
13 deposition testimony or the most recent update from the stand?

14 MR. LAURIA: Your Honor, Tom Lauria for the plan
15 investors. I do not wish to cross the examine the witness
16 however I do want to, on the record, just reserve our rights
17 and make it clear that we're not expecting the Court to make
18 any finding on this particular issue, we have an independent
19 right to be satisfied that this cap has not been exceeded. And
20 I -- I'm, kind of, surprised if this is an effort to get a
21 finding that that cap has been satisfied separate and apart
22 from the determination we have the right, under our contract,
23 to make.

24 THE COURT: Okay.

25 MR. BUTLER: Your Honor, the evidence is what it's

1 for. I mean, I'm not -- there's nothing --

2 THE COURT: The evidence is for confirmation
3 purposes. And primarily goes to valuation issues, since
4 there's an adjustment under the investment agreement if the cap
5 is exceeded. So that's the purpose for which it's being
6 offered. All right. You can step down Mr. Unrue. Thank you.

7 MR. BUTLER: Your Honor, the debtor's forth witness
8 in support of its confirmation hearing is Keith D. Stip. Mr.
9 Stip is the divisional chief financial officer of the
10 Automotive Holdings Group at Delphi Corporation and has had
11 various other responsibilities over his twenty-three years at
12 Delphi Corporation. Mr. Stip, will you please stand if you're
13 not already standing. There is Mr. Stip.

14 Your Honor, his declaration has been admitted at
15 Exhibit 64 and his deposition has been admitted at Exhibit 514.
16 I'd offer Mr. Stip for cross examination by the parties or for
17 any questions Your Honor may have.

18 THE COURT: All right. First, does anyone wish to
19 cross examine Mr. Stip on his declaration? All right.
20 Mr. (indiscernible) -- you were, I assume, heavily involved in
21 the analysis and negotiation of the GM issues, correct?

22 MR. BUTLER: Yes, Your Honor.

23 THE COURT: All right. I may have a question as to
24 analyzing the settlement in light of potential objections that
25 may come up. But I -- I believe it's more of a lawyer's

1 question then -- then a question for the witness. So, now that
2 you've confirmed that you were involved in that analysis and
3 negotiations I won't -- I don't have any questions for Mr.
4 Stip.

5 MR. BUTLER: Thank you, Your Honor. Your Honor, with
6 respect to Mr. Unrue and Mr. Stip, they may be here for part of
7 the hearing on other matters, may they be excused as witnesses?

8 THE COURT: Yes. You might be able to auction off
9 your seat too, if you're willing to leave.

10 MR. BUTLER: Your Honor, that would complete what I
11 refer to, sort of, as the group one witnesses in this case
12 which are witnesses that have testified comprehensively as
13 Mr. Sheehan has in support of confirmation. And then as to
14 Mr. Whitmer in terms of their evaluation of the business plan.
15 Mr. Unrue on claims and Mr. Stip on the General Motors
16 settlement. We now move into what I refer to as the group two
17 witnesses, dealing with matters relating to valuation,
18 liquidation, substantive consolidation and the best interest
19 test in the 1129 of the Bankruptcy Code.

20 THE COURT: Okay.

21 MR. BUTLER: And these witnesses are the two
22 principal financial advisors the company's had during the
23 Chapter 11 cases. First, the -- the partner who has lead the
24 engagement for FTI, Randall S. Eisenberg, whose declaration has
25 been admitted as Exhibit 83 and whose deposition has been

1 admitted at Exhibit 517.

2 Your Honor, I'd like to present -- these have been
3 admitted and I'd like to present Mr. Eisenberg now for cross
4 examination by the parties or for any questions the Court may
5 have with respect to his testimony.

6 THE COURT: Okay. Does anyone wish to cross examine
7 Mr. Eisenberg on his declaration or the subject of his
8 deposition? Okay. Mr. Eisenberg, I do have one -- one set of
9 questions for you so if you could come up here I'd appreciate
10 it.

11 (Witness is Sworn)

12 THE COURT: And would you spell your name for the
13 record.

14 THE WITNESS: Sure. Randall S. Eisenberg,
15 E-I-S-E-N-B-E-R-G.

16 THE COURT: Okay. Mr. Eisenberg, in your declaration
17 you -- you go through the analysis that you and your colleagues
18 at FTI, in consultation with Skadden, undertook regarding the
19 plans proposed substantive consolidation. You're familiar with
20 that?

21 THE WITNESS: Yes, I am.

22 THE COURT: Earlier in the hearing Mr. Butler
23 reported, in connection with the voting certification portion
24 of the hearing, that two of the DAS group debtors had classes
25 that didn't accept the plan. They were lower down in the

1 organization structure, ASEC Manufacturing General Partnership
2 and, I believe, Delphi Electronics. Do you recall that?

3 THE WITNESS: I do.

4 THE COURT: Did you or your colleagues do any
5 analysis as to whether -- or do you have -- let me change that.
6 Do you have an opinion as to whether the creditors, the
7 unsecured creditors, of those two entities -- or let's take
8 them separately -- of each of those two entities, respectively,
9 would be harmed by the proposed substantive consolidation of
10 the DAS/Delphi Corp. debtors.

11 THE WITNESS: Yes, I do have an opinion.

12 THE COURT: And what is that opinion?

13 THE WITNESS: It's my opinion that creditors in
14 either of those entities will not be harmed as a result of the
15 substantive consolidation under the plan.

16 THE COURT: And what is the basis for that opinion?

17 THE WITNESS: The plan calls for a recovery of par
18 plus accrued -- excuse me -- par plus accrued for preponderance
19 of the creditors and preponderance of the classes. And as a
20 result of that these creditors will receive the same recovery
21 whether substantive consolidation is approved or not approved.

22 THE COURT: Is it -- if -- if the -- if you looked at
23 those companies on a stand-alone basis, is it your view that
24 those creditors would get that -- that level of recovery or did
25 you do that type of analysis?

1 THE WITNESS: We did not look at an analysis on a
2 going concern basis as to what he recoveries would be on an
3 individual, entity by entity, basis, no.

4 THE COURT: You did that on a 1129(a)(7) basis?

5 THE WITNESS: We did it --

6 THE COURT: Best interest basis?

7 TRHE WITNESS: -- on a best interest basis, that's
8 correct.

9 THE COURT: And it was your conclusion, on a best
10 interest basis, that -- that what would happen to those
11 creditors?

12 THE WITNESS: One moment, Your Honor. I'm sorry, let
13 me just clarify. We performed substantive -- a best interest
14 test as it relates under two conditions. One is under
15 substantive consolidation under the plan as well as substantive
16 consolidation for all debtors. We did not do an analysis on an
17 entity by entity basis under liquidation. Again, I would point
18 out though, under reorganization the creditors of those
19 entities will not be harmed because they will receive, in
20 essence, the same recovery whether those estates are
21 substantively consolidated or not substantively consolidated.

22 THE COURT: Okay. All right. Are you aware of
23 whether these are operating entities?

24 THE WITNESS: ASEC Manufacturing is an operating
25 entity. And Specialty Electronics -- if I could just get

1 clarification from counsel on the specific entities actual name
2 because some of the names are fairly similar?

3 MR. BUTLER: Yes, the two that we indicated earlier,
4 Your Honor, were ASEC Manufacturing General Partnership of
5 Delaware and the other entity -- maybe we could put up, if we
6 could, Plan Exhibit 95, page 54 on the screen which has the
7 chart and the other -- and shows where they are in the
8 structure. And the others -- the other one is Delphi
9 Electronics Holding, LLC.

10 THE WITNESS: Delphi Electronics Holding, LLC, is a
11 holding company.

12 THE COURT: Okay.

13 THE WITNESS: It's not an operating entity.

14 THE COURT: And ASEC is the entity you were thinking
15 of before when you said it had some -- it was an operating
16 entity?

17 THE WITNESS: Yes, sir.

18 THE COURT: And am I right that each of these two
19 entities is within the alleged control group that the PBGC has
20 said it would have a claim against?

21 THE WITNESS: That is my understanding. Correct.

22 THE COURT: Okay. All right. Does anyone have
23 any -- any questions of Mr. Eisenberg in -- in light of the --
24 my questioning of him?

25 MR. BUTLER: Your Honor, I just have a very brief re-

1 direct.

2 THE COURT: Okay.

3 MR. BUTLER: If we could put on the screens Exhibit
4 83, page 28. Okay.

5 THE COURT: What is that document?

6 MR. BUTLER: That would be his report, Your Honor.

7 THE COURT: Oh, okay. I have that.

8 MR. BUTLER: You've got that.

9 THE COURT: Yeah.

10 MR. BUTLER: It's page 28 of the report.

11 RE-DIRECT EXAMINATION BY

12 MR. BUTLER:

13 Q. Mr. Eisenberg, did you -- you testified --

14 THE COURT: Do you have it, Mr. Eisenberg?

15 THE WITNESS: I do. Yes.

16 THE COURT: Okay.

17 Q. You testified, in response to the Court's question, as to
18 whether or not you had done examination on individual debtor by
19 debtor basis, on a reorganization basis or on a best interest
20 basis. Did you -- and you had testified no. Did you do an
21 examination of each entity on a debtor by debtor basis from a
22 substantive consolidation perspective?

23 A. Yes, I did.

24 Q. And are the results -- the summary of your report with
25 respect to that analysis set forth on pages -- as to the DAS

1 LLC and its debtor subsidiaries set forth on pages 28 and 29 of
2 your report?

3 A. Yes, it is.

4 Q. And looking at ASEC Manufacturing General Partnership, am
5 I correct to refer to that as entity number three?

6 A. Yes.

7 Q. All right. In -- in reviewing that line item could you
8 just, very briefly, walk the Court through your assessment of
9 ASEC Manufacturing General Partnership from a sub-con
10 perspective?

11 A. Yes, I can. ASEC, like many of the other DAS
12 subsidiaries, is an entity that does not portray itself in
13 front of the marketplace as a separate entity. Going to --
14 just highlighting some of the items across the row, the entity
15 does not have its own financial statements. It does not have
16 documents that reflect the name ASEC Manufacturing General
17 Partnership, business documents of various natures. It does
18 not file its own federal tax return. It does not provide its
19 creditors or potential creditors individual creditor
20 information as it relates to its financial wherewithal and
21 capabilities. Among other -- among other components it is
22 unable to obtain its own financing. It does not have its own
23 trial balance. It has lock boxes or it participates in the
24 ASEC -- I'm sorry -- in the global or the U.S. rather -- the
25 U.S. cash management system. It also does not have its own

1 engineering services. This is an entity that, again, portrays
2 itself to the marketplace as part of overall Delphi
3 Corporation.

4 THE COURT: Okay.

5 Q. Would you also -- is -- is -- on your report is item --
6 entity number 12, that's the entry number for Delphi
7 Electronics Holding, LLC, is that correct?

8 A. Yes, it is.

9 Q. And did you perform a separate examination with respect to
10 that entity?

11 A. Yes, I did.

12 Q. Could you explain to the Court the results of your
13 examination?

14 A. In summary, very similar to what I described with respect
15 to entity number three, ASEC Manufacturing General Partnership.
16 Delphi Electronic Holdings does not portray itself in the
17 marketplace as a separate entity. It has all -- many of the
18 same characteristics. I can go through them specifically with
19 the Court if they'd like. But in general it's very similar
20 both as it relates to creditor reliance and attainment of
21 affairs.

22 MR. BUTLER: One moment, Your Honor, if I may? All
23 right. Your Honor, I have no other questions of the witness.
24 Thank you.

25 THE COURT: Okay. Did you -- did you -- are you

1 familiar with the basis for the scheduled assets and schedule
2 liabilities for those two companies or is that something --

3 THE WITNESS: Yes, I am familiar with them. Yes.

4 THE COURT: Is there a reason why the assets and
5 liabilities of entities three, four and five are all the same?

6 THE WITNESS: Yes, there is. Entities three, four
7 and five all share one trial balance and therefore we're
8 unable -- we were unable to, at the time, to break out the
9 individual assets and liabilities. And I believe that's so
10 footnoted in the actual statements and schedules that were
11 filed with the Court.

12 THE COURT: Okay. All right. Any -- any questions?
13 Any further questions? All right. You can step down, sir.

14 THE WITNESS: Thank you.

15 MR. BUTLER: Your Honor, I'd also indicate now, and
16 I'll deal with this later in argument, but the -- I think
17 Your Honor can take judicial notice of the catalyst sale order
18 that Your Honor entered earlier in these cases. And the
19 catalyst sale order involved selling the assets of ASEC. And I
20 think Your Honor will be able to take judicial notice of the
21 fact that that sale order approved that sale -- the sale of
22 those assets for an amount less than seventy-five million
23 dollars. And when we get through to talk about it,
24 substantially less value than the claims against the -- filed
25 against that entity.

1 THE COURT: Okay.

2 MR. BUTLER: But we'll deal -- I just wanted to but a
3 place holder here in the record as to that sale.

4 Your Honor, the debtor's sixth witness in support of
5 its confirmation hearing is the company's principal outside
6 financial strategist and banker -- investment banker, David
7 Resnick from Rothschild, who's also been a frequent witness in
8 these cases over the last several years. Mr. Resnick's
9 deposition has been admitted at Exhibit 85 and his deposition
10 has been admitted at Exhibit 550.

11 Your Honor, I introduce Mr. Resnick at this hearing
12 for purposes of cross examination by any party or for any
13 questions the Court might have.

14 THE COURT: Okay. Does anyone wish to cross examine
15 Mr. Resnick on his deposition or -- deposition transcript or
16 his declaration or the subject of his deposition? All right.
17 I have no questions of Mr. Resnick.

18 MR. BUTLER: Thank you, Your Honor. Your Honor, I
19 notice it's the noon hour and I'd like to get some guidance
20 from the Court on what you'd like to take up next. In terms of
21 moving forward with the witnesses on the management comp issue,
22 we'd like to do that after the lunch break. In part because --
23 no one can ever plan a hearing perfectly, had someone told me
24 yesterday that we'd be through our first six witnesses in an
25 hour at this hearing, I'm not sure that I would have accepted

1 that evaluation as realistic. And so, Mr. Naylor won't be with
2 us until shortly after lunch, who's our next scheduled witness
3 and that's also on the management comp side.

4 Mr. Naylor and Mr. Bubnovich are witnesses only on
5 those issues. Mr. Miller's testimony goes to both that issue
6 and more broadly the debtor's cases. And I would rather leave
7 him for last in case there is cross examination. And so I --
8 I'd like -- the -- so aside, Your Honor, from Mr. Miller and
9 aside from the specific issue you asked to deal with separately
10 on the union's objections to management compensation, the
11 testimony is now in, in terms of the first six witnesses and in
12 terms of the evidentiary -- the evidentiary record. We have to
13 deal with Mr. Naylor -- the UAW's objections to Mr. Naylor and
14 Mr. Miller, those two paragraphs, but other than that, those
15 are the only two documentary objections that are left.

16 So, I could do -- we could do one of two things,
17 Your Honor or whatever else Your Honor would like to do but the
18 two possibilities here would be to spend some time going
19 through the balance of the objections that are live to figure
20 out -- sort out who's going to pursue them and who's not.

21 THE COURT: I think that's a good idea. If
22 that'll -- my guess is that won't take very long so let's do
23 that first. Just who's -- who is here and not content to rely
24 upon their objection either implicitly because they're not here
25 or because that's all they want to do.

1 MR. BUTLER: Right.

2 THE COURT: And who will be arguing an objection and
3 who may even have a witness. And -- and that's other than the
4 unions because I know the unions are here and have their own
5 record.

6 MR. BUTLER: Your Honor, I think the -- I'd like to
7 put the chart back up that we had before and go to page 27 of
8 that -- 28. And this would be the objection chart and let's
9 walk through those again. All right. It'll just take a second
10 so we can get it up so we can all see it. All right. And then
11 again, page -- if we can go to page 27 of the exhibit. This,
12 again, so the record's correct, we're back to Exhibit 158 and
13 on page 27 of that exhibit now. I had passed on the IUE
14 objection which is being prosecuted. And I think I had started
15 to deal with the objection of Cheryl Carter at 11753 and at
16 11806. Those were the letter objections that were in
17 opposition to confirmation.

18 THE COURT: Okay. And I think we've already
19 determined that Ms. Carter's not present and so I assume that
20 will just get dealt with in closing argument.

21 MR. BUTLER: The next objection is the objection
22 11811 of Darla and Alan Schmidt (ph.). This was an objection
23 that they filed to the treatment of Delphi stock under the
24 plan.

25 THE COURT: All right. Are Mr. and Mrs. Schmidt or

1 their counsel present? Okay. You can go to the next one.

2 Again, we'll address these in closing argument.

3 MR. BUTLER: The next objection, Your Honor, is the
4 objection at docket number 11812 of Frank X. Budiluwsky (ph.).
5 He objects to the pension plan, treatment described in the plan
6 on various basis including asserting age discrimination and
7 other matters.

8 THE COURT: Okay. Is Mr. Budiluwsky or his counsel
9 present? All right. So you can go to the next one.

10 MR. BUTLER: Okay. The next objection, and these are
11 actually -- there are two objections filed. One at docket
12 number 11822 and the other one at 12016. These were filed by
13 Frank Helizon (ph.) a former employee of Delphi Corporation.
14 Mr. Helizon asserts that the plan is unfair and inequitable
15 because it does not include the foreign subsidiaries as part of
16 the liquidation analysis. He objects to the -- and he also
17 objects to the management compensation plan as unreasonable and
18 unfair to the other stakeholders in the case.

19 THE COURT: Okay. Is Mr. Helizon here or represented
20 here? Okay.

21 MR. BUTLER: Your Honor, the next objector is at
22 docket number 11823. This is Pima County. Pima County asserts
23 that the plan would impermissible strip secured tax claimants
24 of their liens without having first paid all taxes and interest
25 by treating those secured claims in the same manner as priority

1 tax claims. And they also make various other allegations with
2 respect to taxing matters including payment of its claim over a
3 six year period would be objectionable and other assertions.
4 They also assert that the plan violates section 1129(a)(7) of
5 the Code because in a liquidation scenario Pima County would
6 receive payment of its tax claim in full.

7 THE COURT: All right. Is anyone present for Pima
8 County?

9 MR. YUSUFOV: (Indiscernible).

10 THE COURT: Yes, okay. Sir, the debtors have stated
11 on the record and pointed to the provision of the plan that has
12 liens surviving. I don't know if it may be fruitful, offline,
13 while we're at lunch for you to speak with someone about the
14 plan. I think your objection might be resolvable, conceivably.

15 MR. YUSUFOV: I'm not able (indiscernible).

16 THE COURT: Okay. What I'm saying is, if you give
17 your phone number, now, to -- to -- on the record, someone from
18 the debtors will contact you. I -- I have a feeling that your
19 objection may be resolvable as a number of the other objections
20 have been that are somewhat similar to this, if you want to do
21 that.

22 MR. YUSUFOV: (Indiscernible). Let me just address,
23 briefly, if you would (indiscernible).

24 THE COURT: No, let me -- Mr. Butler, why don't you
25 repeat what I said.

1 MR. BUTLER: All right. Sir, I -- the Court had
2 asked if you would give your phone number on the record so that
3 you could be contacted again by debtor's counsel. His
4 statement was that seeing as the debtor's have acknowledged on
5 the record that the plan is not stripping any liens and the
6 liens are going to survive the Chapter 11 case, the Court
7 indicated the view that this should be a resolvable objection.
8 If you would like to engage us over the lunch break we're happy
9 to call you if you'd give us your telephone number.

10 MR. YUSUFOV: Certainly. My phone number is 520-740-
11 5750. And, Your Honor, if I may, I think I can partially
12 address the objection right now.

13 THE COURT: Well, I'd rather you -- I think we may be
14 able to avoid that if -- if you speak with the debtors.
15 Because I think -- my -- I have a pretty good belief that
16 it's -- it's something that can be resolved without having to
17 have oral argument or a ruling on. So I'm going to ask the
18 debtors to give you a call once we adjourn for lunch. And
19 you'll have a chance to make this argument later if you can't
20 resolve it with them.

21 MR. YUSUFOV: Thank you, Your Honor. May I be
22 excused at this time?

23 THE COURT: Yes.

24 MR. YUSUFOV: Thank you.

25 THE COURT: But keep your phone by you.

1 MR. YUSUFOV: Yes.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, the next objection that is
4 unresolved is at docket number 11869, Equistar Chemicals LP.
5 Equistar seeks to reserve its right -- it's claimed right of
6 setoff and objects to the plan it disallows or impairs claims
7 of setoff or offset that would result in the discharge of
8 Equistar's alleged secured claim without providing it the
9 equivalent of its claim.

10 THE COURT: Okay. Is anyone from Equistar present or
11 on the phone? All right. I would have -- I would have
12 suggested the same approach but we'll just deal with this at
13 oral argument. My understanding is the debtor's acknowledge
14 that a valid setoff claim is a lien under the Bankruptcy Code.

15 MR. BUTLER: Yes, Your Honor.

16 THE COURT: And therefore it's preserved under the
17 plan. It's not stripped away.

18 MR. BUTLER: That's correct, Your Honor.

19 THE COURT: Unless of course you haven't -- you
20 haven't filed a proof of claim or your claim's disallowed.

21 MR. BUTLER: Right. I mean, with all the normal
22 claims administration caveats, Your Honor.

23 THE COURT: Right. Okay.

24 MR. BUTLER: Your Honor, the next one I believe that
25 is still not specifically settled -- bear with me one moment --

1 is docket number 11883, Audio MPEG, Inc. This is an
2 intellectual property dispute and there is an objection that
3 the license -- the assumption of a license agreement --
4 assumption of a license agreement that should not be assumable
5 or assignable based on bankruptcy law and non-bankruptcy law
6 basis. There's a -- they have a series of objections but this
7 all relates to intellectual property disputes with respect to
8 their license and what they think they're entitled to.

9 This is also, I believe, the only declarant -- the
10 only objection that has a declarant attached to it, that I'm
11 aware of. And we have discussed -- there was a declaration
12 that was presented to the debtors of a Mr. Lancaster. We have
13 agreed that Mr. Lancaster would be made available for
14 deposition at a later time. We're not stipulating to the facts
15 set forth in his declaration. We reserve our rights to contest
16 it. The debtors understand the purpose of the declaration was
17 to show standing to make legal objections to the plan. And we
18 don't object to its admission for that limited purpose. We
19 didn't -- the declarant was not presented to us for cross
20 examination. I don't believe the declarant's here for --
21 for -- at court.

22 THE COURT: Well, let me -- let me just -- this is an
23 objection to assumption of this license?

24 MR. BUTLER: Among other things.

25 THE COURT: Well, I'm just wondering, is this

1 something that is part of the confirmation hearing?

2 MR. BUTLER: Well, Your Honor, I think some of the
3 relief -- some of the relief ultimately is. I do believe that
4 we could put this off to another day but that would have to be,
5 you know, I'd have to hear what counsel thinks.

6 THE COURT: Okay.

7 MS. DOWD: Your Honor, if I could be heard briefly.
8 Mary Joe Dowd on behalf of the objector, the intellectual
9 property patent licensor. A clarification, we did submit a
10 declaration and it's my understanding that we have an agreement
11 with debtor's counsel that it could be -- it's admissible
12 insofar as it goes for the purposes of giving us standing to
13 raise the legal issues that will be relevant for this hearing.
14 It's not being offered with respect to a determination of an
15 amount of a cure claim. We agree that there will be further
16 discovery on that at a later date.

17 THE COURT: Okay.

18 MS. DOWD: In terms of some of the objections that we
19 note, do go to the issue of the cure amount and we agree and
20 understand that those are for a later hearing. However, we did
21 object to the scope of the third-party releases to the extent
22 that they impact these world-wide licenses that we've granted.
23 Our concern is the breadth of the releases in terms of not
24 wanting to cut off our rights against parties that are not
25 covered by the license agreement such that if we have a cure

1 claim against the debtor and it's assumed, if the third-party
2 release is to broad, for example for goods that they sell in
3 the aftermarket, you could read it to have released that. I'm
4 not sure that that was their intent but we object to the
5 breadth of the third-party release which is a confirmation
6 objection.

7 THE COURT: All right. Okay. Well it sounds to me,
8 then, that if this isn't resolved during the lunch break it
9 will be dealt with at oral argument because it really does
10 go -- it's not really an evidentiary issue so much as an
11 argument about the release language.

12 MS. DOWD: Yes, Your Honor.

13 THE COURT: Okay. But it may be resolvable at the
14 lunch break. If the particular concern that Audio MPEG has
15 about the release, I'm not sure -- I'm not sure this is
16 something the debtors mean to cover.

17 MR. BUTLER: Your Honor, we can continue to talk
18 with -- we've been talking with this particular objector for --

19 THE COURT: Okay.

20 MR. BUTLER: So we'll continue those discussions at
21 lunch.

22 THE COURT: All right. Well, now that things are
23 imminent maybe everyone'll be a little more focused.

24 MR. BUTLER: Your Honor, the next objection is
25 objection 11888, Fujikura America, Inc. This is objections

1 relating to certain executory contracts to be assumed by the
2 debtors, including contracts for which they allegedly did not
3 receive cure notices. And they assert the plan must provide
4 for the payment in cash on the effective date of all defaults
5 under these executory contracts. And insofar as the objection
6 is that it has to be paid on the effective date, that's not
7 what our plan says. Our plan says on the later of the
8 effective date or the date in which the cure claim is, if they
9 have a cure claim, that cure claim is something that we
10 allow by --

11 THE COURT: Okay. So this is an issue of law too.

12 MR. BUTLER: Yes.

13 THE COURT: All right. So we'll deal with this
14 during oral argument.

15 MR. BUTLER: I don't know whether Fujikura's here.

16 MR. DREMLUCK: Your Honor, may I be heard?

17 THE COURT: Yes. I'm just now trying to figure out
18 whether we're going to have -- whether you're -- you're not
19 putting on evidence are you?

20 MR. DREMLUCK: No, I'm not, Your Honor. I think we
21 can resolve this. And if I may, Robert Dremluck, Seyforth Shaw
22 for Fujikura America.

23 What's happened is this, there are up to about five
24 executory contracts that seemed to have slipped through the
25 cracks. I've shared some information with representative of

1 the company earlier this morning with respect tot hose. And I
2 think what we can do during the lunch break is identify three
3 of those five contracts that continue to be ongoing and the
4 cure amounts that we believe are due that did not get a cure
5 notification from the debtor. It's really a housekeeping
6 matter, I think, to clean up this issue as to what the cure
7 amount is and then treat it under the plan as -- as a cash
8 cure.

9 THE COURT: Okay. If it can be resolved, that's
10 fine. If it -- if there's an open cure dispute and you still
11 have your plan objection then I'll resolve it at oral argument
12 based on the law.

13 MR. DREMLUCK: Understood. Thank you, Judge.

14 THE COURT: Okay.

15 MR. BUTLER: Okay. Your Honor, the next objection
16 that I have as still pending is objection docket number 11894.
17 This is AT&T who objects to the plan on the basis that the
18 contracts are to be assumed without payment in full of the pre-
19 petition and post-petition amounts owed. And they're asking us
20 to be compelled -- for you to compel us to cure all the
21 defaults under the assumed contract.

22 We don't view this as an objection to confirmation.
23 We think article 8 of the plan provides all of the mechanics
24 for how to deal with this issue.

25 THE COURT: All right.

1 MR. BUTLER: That's -- that's --

2 THE COURT: Is anyone here for AT&T? Well, again,
3 this is similar, I think, to the Fujikura issue except that
4 there's no chance of resolving it in the interim. And so, I'll
5 rule on it as a matter of law as to what a debtor's duty is
6 when there's a pending --

7 MR. BUTLER: Thank you, Your Honor.

8 THE COURT: -- motion to assume or reject as far as
9 the timing of when that has to be performed.

10 MR. BUTLER: Thank you, Your Honor. Your Honor,
11 11908 is the next -- docket 11908 is the next objection. This
12 is an objection by Riverside Claims, LLC, which asserts that
13 the plan violates Sections 1129(a)(1) and 1122 of the Code by
14 misclassifying things. They have a classification objection.
15 They have an objection that the plan doesn't pay in full, that
16 it's not providing fair and equitable treatments of claims, it
17 violates the absolute priority rule. That -- that post-
18 petition interest should accrue until the effective date of the
19 plan not just until January 31, 2008 as the plan currently
20 states. And that we can't meet the cramdown tests, which I
21 think are inapplicable here, but the cramdown tests, under
22 1129(b), they have -- they object to sub-con and a variety of
23 other basis.

24 THE COURT: Okay. Is counsel for Riverside here?

25 MR SCHMIDT: (Indiscernible). I don't know if you

1 can hear me way in the back here.

2 THE COURT: I can. Do you anticipate presenting
3 evidence?

4 MR. SCHMIDT: I don't, Your Honor. And I'd just like
5 the opportunity to speak with debtor's counsel during the lunch
6 break and perhaps this is resolvable.

7 THE COURT: Okay. Otherwise we'll deal with it at
8 oral argument.

9 MR. BUTLER: All right. Your Honor, the next
10 objection that's still pending is at docket number 11927, the
11 Timken Company. They are asserting unfair discrimination
12 between the treatment for cured claims and general unsecured
13 claims because cured claims aren't getting post-petition
14 interest and unsecured claims are.

15 THE COURT: Okay. Is anyone here for Timken?

16 MR. SULLIVAN: James Sullivan, McDermott Will & Emery
17 on behalf of Timken, Your Honor.

18 THE COURT: Okay.

19 MR. SULLIVAN: We wouldn't anticipate any evidentiary
20 issues.

21 THE COURT: All right. So again this is just a
22 legal -- a legal dispute.

23 MR. BUTLER: Your Honor, the next objector is at
24 docket number 11935. This is Law Debenture Trust Company of
25 New York. And this is an objection to the mechanics in the

1 plan on how their fees are being paid and they're therefore
2 asserting a violation of 1123(a)(4). I think someone's here
3 from --

4 MR. JONAS: Yes, Your Honor. Jeff Jonas from
5 Brown Rudnick for Law Debenture.

6 THE COURT: Is there -- is there -- there was some
7 allusion in the debtor's reply brief that you all are still
8 discussing how to deal with the indentured trustee fee issue?

9 MR. BUTLER: We had proposed mechanics; so far those
10 mechanics have been unacceptable to the indentured trustee.

11 THE COURT: All right. Well, if they're not
12 acceptable I'll deal with this at -- in oral argument.

13 MR. FOX: Your Honor, Edward Fox. Wilmington Trust
14 also has the same objection, just so you're aware. There is
15 some changes that were made in the proposed confirmation order.

16 THE COURT: I saw it. Yeah, I saw that.

17 MR. FOX: We sent back to the debtors, last evening,
18 and I have a copy for them if they need hard copies, of some
19 additional language to address the mechanical issues that, you
20 know, doesn't go to the substance of it but in our view would
21 then resolve that issue.

22 THE COURT: Okay. Well maybe -- maybe you can --

23 MR. FOX: Yeah, I would hope that we can --

24 THE COURT: -- talk about that with one of the
25 debtor's counsel and Law Debenture's counsel.

1 MR. BUTLER: Your Honor, docket number 11938 is the
2 UAW objection which is proceeding. Docket number 11939 is the
3 lead plaintiff and the prospective class objection which, I
4 think, goes, I think, to a release point actually.

5 THE COURT: I'm aware -- there's no evidence on this
6 one. This is just discuss at oral argument, right?

7 UNIDENTIFIED ATTORNEY: That's correct, Your Honor.

8 THE COURT: Okay.

9 UNIDENTIFIED ATTORNEY: And there will be a second
10 presentation on our settlement papers.

11 THE COURT: Right. That may moot it. Okay.

12 MR. BUTLER: Your Honor, the next objection, I'm now
13 on page 28, going to docket number 11940 is the objection filed
14 by certain retiree claimants. This was a protective objection
15 that was filed in the event that a settlement was unable to be
16 finalized. I know we've been working on that. I don't know
17 what the results are and whether there are counsel here to
18 press the objection.

19 THE COURT: Okay.

20 MR. BUTLER: This is the retiree objection.

21 MR. SCHMIDT: Your Honor, Erik Schmidt again,
22 Herrick Feinstein. I understood that this was a different
23 process (indiscernible). I'm only local counsel. Counsel was
24 going to appear by phone. I don't think there are evidentiary
25 issues, Your Honor.

1 THE COURT: Okay. All right.

2 MR. BUTLER: The --

3 THE COURT: Well they -- there better be -- there
4 should be some confirmation of it because then otherwise either
5 side runs some risk that I'm going to make a ruling that they
6 won't like. So --

7 MR. BUTLER: Right. I mean --

8 THE COURT: But since it was couched the way it was
9 couched, I have a feeling -- well, I think they better get in
10 touch with the debtor.

11 MR. BUTLER: Your Honor, objection -- docket number
12 11944 is the objection of Equity Corporate Housing. This is an
13 objection arguing that the discount rights offering violates
14 502(c) the absent (indiscernible) rule, and other matters.
15 They have a series of objections and this is -- this is a
16 creditor -- may be -- is an alleged creditor of class 6C.

17 THE COURT: Okay. Is anyone here for that objector
18 or on the phone for Equity Corporate Housing? All right. So
19 there's -- they're going to rely on their papers, I guess.

20 MR. BUTLER: Okay. Your Honor, the next objection
21 that I have marked as still being pending is objection 11957.
22 And this is the objection of Fiduciary Counselors, Inc., where
23 they joined the PBGC objections and arguing that there is a
24 problem with Section 722(d). I think this is -- they're
25 joining the PBGC objection which, I think, we have resolved

1 provided the language that we agree with the PBGC's, a fact
2 accepted by Your Honor, and they also -- they also had asked
3 for some other findings under the plan. I don't know whether
4 they're here to press the objection or not.

5 MS. CALOWAY: Your Honor, Mary Caloway, Buchanan
6 Ingersoll and Rooney on behalf of Fiduciary Counselors. I just
7 learned this morning from Mr. Butler's presentation that the
8 objection of the PBGC had been resolved. That had been our
9 primary concern and why we filed a joinder. Subject to, over
10 the lunch break, confirming that the language is what we were
11 shown yesterday, that portion of our objection would -- would
12 be resolved.

13 We had asked for the addition of four words to the
14 order. It's not the end of the world if they're not in. I
15 disagree that their addition would render the confirmation
16 order redundant somehow. But to answer your question --

17 THE COURT: Okay.

18 MS. CALOWAY: -- we probably won't be pressing it and
19 there would certainly be no evidence.

20 THE COURT: Okay. Thank you.

21 MR. BUTLER: Objection number 11973 is the ERISA lead
22 plaintiffs. I think this is the same -- the same as the 11939.

23 MR. GORRO: That's right, Your Honor. Gary Gorro for
24 the ERISA lead plaintiffs.

25 THE COURT: This may be -- this may be mooted out by

1 the hearing on the -- on the MDL settlement.

2 MR. GORRO: I hope it is, Your Honor.

3 THE COURT: Okay.

4 MR. BUTLER: The next objection, Your Honor, is
5 objection 12012 from Wilmington Trust Company.

6 MR. FOX: Your Honor, we just -- Edward Fox. We just
7 addressed the fee issue. The other issue is whether the
8 confirmation is appropriate until they have the commitments.

9 THE COURT: And do you have any -- any witnesses or
10 evidentiary presentation on the feasibility issue?

11 MR. FOX: It's all in already. Just five, ten
12 minutes argument. That's all.

13 THE COURT: Okay. All right.

14 MR. BUTLER: The next -- the next objector is --
15 that's open is at 12013. this is Mr. Larry Vanderpool who
16 was -- it was filed after the objection deadline but objects to
17 the information provided to employees in connection with
18 various union memoranda understanding and asserts the
19 information provided was misleading.

20 THE COURT: Okay. Is Mr. Vanderpool here or on the
21 phone or his counsel? All right. So we'll deal with that at
22 oral argument.

23 MR. BUTLER: The next objection I already mentioned,
24 Mr. Helizon. We already discussed this. So the next objection
25 would be, and these are all -- most of these now are late filed

1 objections. Objection number 12017 from Robert W. Ward. The
2 objector asserts as a shareholder he's entitled to the same
3 percentage of organized -- of ownership in reorganized Delphi
4 as he had in pre-petition Delphi. So we'd like to ride
5 through. And the -- that's his assertion, Your Honor.

6 THE COURT: Okay. Mr. Ward, are you here? All
7 right. That'll be dealt with.

8 MR. BUTLER: Okay. We've dealt with 12026 which will
9 be argued. The next one is docket number 12079,
10 Orwell W. Write (ph.). An assertion because he worked for GM
11 for over thirty years, his pension plan should not have been
12 transferred to Delphi upon separation. And that his flow back
13 opportunities to GM should have better explained to him. This
14 was a late filed objection.

15 THE COURT: Okay. Mr. Write are you on the phone or
16 is counsel for Mr. Write on the phone? All right. So that'll
17 be dealt with at oral argument.

18 MR. BUTLER: The next objection, Your Honor, is the
19 objection of Mr. Miller, Keith Miller. He asserts that he was
20 not provided sufficient time to return his ballot because he
21 did not receive it from his proxy in a timely manner. And his
22 objection is late filed at docket number 12080.

23 THE COURT: Okay. Did he make a provisional vote?

24 MR. BUTLER: I don't know, Your Honor. I don't -- I
25 don't believe so but I don't know.

1 THE COURT: Do we know who he is? Is he a creditor
2 or --

3 MR. BUTLER: I don't know anything about Mr. Miller
4 other than --

5 THE COURT: Than what he filed.

6 MR. BUTLER: -- what he filed. I could go back
7 and --

8 THE COURT: Well, it may be moot. But we'll deal
9 with it at oral argument.

10 MR. BUTLER: Docket number 12081 is the next
11 objection. This is the Monroe County Water Authority. And
12 they -- they've -- they filed late objection as a utility.
13 They assert the payment of the claims in the form of stock is
14 unacceptable. That they'll -- that the -- Monroe County is not
15 permitted to accept stock.

16 THE COURT: Okay. Is anyone here from Monroe County
17 or on the phone? Okay. So that'll get dealt with at oral
18 argument.

19 MR. BUTLER: And finally, Your Honor, is the late
20 filed letter objection of Naomi M. Fry (ph.). Ms. Fry asserts
21 that new common stock should be valued at \$79.93 cents per
22 share. This should be effectuated for all shareholders as if
23 they filed a class action.

24 THE COURT: Okay. Is Ms. Fry present or on the phone
25 or her representative? Okay.

1 MR. BUTLER: Your Honor, for the record I ask those
2 on the telephone and those here in the hearing room whether
3 there are any objections that have not been waived or withdrawn
4 that I have not called and discussed with the Court?

5 So, Your Honor, I think those are the balance of the
6 objections. I think, Your Honor, it would be helpful to take
7 an extended lunch break so that we can try and work with the
8 folks that have been -- who have indicated they want to proceed
9 with their objections and perhaps come back at 2:30 or
10 something like that.

11 THE COURT: Okay. I think that's a good idea. I
12 would like to meet, however, and everyone else can go
13 including, you know, your colleagues. But I'd like to meet
14 with counsel for the debtors and the two unions if I could,
15 just briefly. So my clerks will bring you around to the
16 conference room.

17 MR. BUTLER: Thank you, Your Honor.

18 (Recess from 12:35 till 3:03 PM)
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25

I N D E X

WITNESS	EXAMINATION BY	PAGE
Dean R. Unrue	Mr. Butler	60
Randall Eisenberg	Mr. Butler	68

E X H I B I T S

DEBTOR'S	DESCRIPTION	PAGE
59	Declaration of Eric Kurtzman	45
554	Deposition of Eric Kurtzman	45
60	Declaration of Jane Sullivan	46
553	Deposition of Jane Sullivan	46
95	Voting Reports and Certification of Balloting Agents	46
1-555		53

RULINGS

	Page	Line
Settlement is Approved	31	8

C E R T I F I C A T I O N

I, Pnina Eilberg, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

January 23, 2008

Signature of Transcriber

Date

Pnina Eilberg

typed or printed name